IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 2819 of 2003

Babu Chandu Dimber ..Petitioner

vs.

Genu Kondiba Dimber ..Respondent

Shri P.B.Shah for petitioner.

CORAM: S.C.DHARMADHIKARI J.
30th **NOVEMBER, 2007**

P.C.

1. This writ petition is directed against the order refusing to condone the delay in filing of the First Appeal.

2. The respondent had filed Reg.Civil Suit No.257 of 1994 against the petitioner for specific performance. That suit was decreed on 31st October, 1995. The petitioner applied for certified copies on 2nd November, 1995. The said copies were received on 12th February, 1996 but the appeal came to be filed on 31st March, 1997. Thus, there was delay admittedly for which he filed an application being Misc.Application No.303 of 1997. The respondents did not file any

reply. The reason given by the petitioner is that he was ill and could not immediately keep in touch with the Advocate. He has produced the medical certificate. The Doctor has stated that the petitioner was under his treatment for quite some time. The learned Judge has, in my opinion, taken a hypertechnical approach, in as much as the delay was not such as was incapable of being condoned. There are reasons assigned and which the learned Judge does not find to be false. The reason of illness being putforward it cannot be said that the application lacks bonafide, more so, when necessary documents were produced.

3. In such circumstances, the order refusing to condone the delay suffers from patent illegality and discretion has not been exercised judiciously and in accordance with law. Liberal principles apply while considering such an application. Delay deserves to be condoned. Order under challenge dated 3rd February, 1999 in Misc.Application No.303 of 1997 is quashed and set aside. The said Misc.Application is allowed, delay condoned and the petitioner to deposit the cost on condition that the petitioner deposits

the sum of Rs.1500/- with the District Legal Services Authority within a period of two weeks from today, proof being produced of such deposit the appeal would be numbered and dealt with in accordance with law.

(S.C.DHARMADHIKARI J.)